IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.840/2005

Tapan Das S/o Shri Kunwar Das
Versus
State of Rajasthan

Date of Judgment :::: 23rd April, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Ali Mohd. Khan, Counsel for accused-appellant
Shri Arun Sharma, P.P., for the State
####

By the Court:-

The matter was listed for orders on the application Inward No.3899 dated 18.4.2007) filed by the accused-appellant for exemption of his personal presence in the court, but, with the consent of both the parties, the appeal itself is being disposed of finally.

Heard learned counsel for both the parties.

The learned counsel for the appellant did not challenge the order of conviction passed by the trial court against the appellant convicting him under Section 363, IPC, but his submission is that the appellant has already remained in jail for about 2 years and 10 days and the prosecutrix PW-5 Sapna Parewa was declared hostile in the present case, therefore, looking to all the facts and circumstances

of the case, the maximum sentence of imprisonment awarded by the trial court may be reduced to a period of imprisonment already undergone by the appellant.

The learned Public Prosecutor does not dispute that the appellant has already remained in jail for about 2 years and 10 days. However, it is contended that the age of prosecutrix Sapna (PW-5) was only 13 years, therefore, the sentence awarded by the trial court is justified and the appeal be dismissed in toto.

On 12.4.2005 PW-6 Harish Parewa lodged a written-report that on 10.4.2005 his daughter had gone to market but she did not come back at home. On enquiry, he came to know that accused Tapan Das abducted his daughter and had taken her to his village in West Bengal. The FIR No.173/2005 was registered under Sections 363 and 366, IPC. Sapna was recovered and accused was arrested. Sapna was medically examined and offence under Sections 366 and 376, IPC was also added and challan was filed under the above Sections.

The Additional Sessions Judge (Fast Track) No.1, Jaipur City, Jaipur, framed charge under Sections 363, 366 and 376, IPC, which was denied and the trial was claimed.

The trial court, after appreciating the entire prosecution evidence on the record, vide its judgment and order dated 22.8.2005 in Sessions Case No.64/2005, acquitted the accused-appellant from the charge under Sections 366 and 376, IPC, but convicted and sentenced

him under Section 363, IPC, and awarded the maximum sentence of 7 years RI with fine of Rs.500/-; in default of payment of fine to further undergo six months RI.

I have considered the statements of PW-6 Harish Parewa, PW-5 Sapna Parewa and other prosecution witnesses. It is true that PW-5 Sapna Parewa was declared hostile by the prosecution during trial. However, there is no dispute that she was recovered from the custody of the accused and the offence under Section 363, IPC, is fully made out in view of the statement of PW-6 Harish Parewa, the father of Sapna, whose statement is corroborated by the statements of PW-10 Poonam Dargan and PW-11 Shankar Singh, the Investigating Officer of the case. Therefore, I find that the trial court was right in convicting the accused-appellant under Section 363, IPC, and the learned counsel for the appellant is right in not pressing the appeal on merits.

So far as reduction of sentence of imprisonment is concerned, the learned counsel for the appellant referred the judgment in **Mohar Pal Vs. State of Haryana – [2004 (1) Criminal Court Cases 0449 (P&H)]**, decided by Punjab and Haryana High Court, wherein, while convicting the accused under Section 363, IPC, the sentence of the accused was reduced to a period of 20 days imprisonment, already undergone by him.

The another judgment referred by the learned counsel for the appellant is in the case of **Vishnu**

Kumar Vs. The State of Rajasthan – [2003 (1) Cr.L.R. (Raj.) 141], wherein this Court reduced the sentence of imprisonment of the accused under Section 363, IPC, to a period of imprisonment of 1 year and 9 months, already undergone by him. The sentence of imprisonment of 7 years is maximum sentence prescribed under Section 363, IPC.

The appellant is continuously in jail since 12.4.2005 and has remained for about 2 years and 10 days till now.

After considering all the facts and circumstances of the case, I find that ends of justice will meet in case the sentence of imprisonment awarded by the trial court is reduced to a period of 2 years and 3 months RI with increased fine of Rs.1000/- (Rupees one thousand).

Consequently, the appeal is partly allowed. The conviction of the accused-appellant under Section 363, IPC, is maintained, but his sentence is reduced to a period of 2 years and 3 months RI and a fine of Rs.1000/- (Rupees one thousand); in default of payment of fine, to further undergo 1 month's additional RI.

(Narendra Kumar Jain) J.

//Jaiman//